

Recommendations for the Implementation of the BUILD Act and the Next Steps for the U.S. International Development Finance Corporation

Ensure Robust Stakeholder Engagement and Transparency in the Transition Process

- Governmental stakeholders responsible for the transition, particularly OPIC, should ensure that the transition process is transparent to the public and as inclusive as possible. They should carry out consultations with a range of stakeholders, including civil society, non-governmental, and community-based organizations in countries where OPIC currently operates and the DFC plans to operate.
- The DFC should prioritize stakeholder engagement, particularly with communities impacted by its activities, and should go beyond the stakeholder engagement requirements in the BUILD Act. The DFC should provide a robust public consultation process for the creation of the stakeholder engagement policy stipulated in the BUILD Act.

Commit Sufficient Resources for Proper Risk Mitigation and Due Diligence¹

- The DFC should develop an internal incentive structure to reward staff for positive development outcomes and the avoidance of negative environmental and social impacts.
- The transition plans for the DFC should include a significant increase in resources, including staff, devoted to environmental and social due diligence.
- The DFC must have the resources to conduct more site visits to comprehensively assess the impacts of its projects. A February 1, 2019 USAID Office of Inspector General report highlighted shortcomings with OPIC's approach to monitoring and mitigating environmental and social impacts, and issued several recommendations to improve OPIC's current practice and inform the practice of the future DFC.²

¹ Recommendations for strengthening OPIC's environmental and social practices and accountability framework can be found in a joint submission for the 2016 consultation on OPIC's Environmental and Social Policy Statement (ESPS). OPIC has implemented some of the recommendations, and the DFC should address remaining gaps. JOINT COMMENTS ON OPIC'S DRAFT REVISED ENVIRONMENTAL AND SOCIAL POLICY STATEMENT (Nov. 23, 2016), <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/11.23.16-OPIC-ESPS-Joint-Submission-1.pdf>.

² USAID OFFICE OF INSPECTOR GENERAL, OPIC INVESTMENTS INCREASED CHILE'S ENERGY CAPACITY, BUT WEAK PROCESSES AND INTERNAL CONTROLS DIMINISH OPIC'S ABILITY TO GAUGE PROJECT EFFECTS AND RISKS 17, 23-25, 28 (Report No. 9-OPC-19-002-P, Feb. 1, 2019), <https://oig.usaid.gov/index.php/node/1892>. The 2019 OIG report is the latest of several recent reports that highlight gaps in OPIC's practices. Building on the findings and recommendations in a 2015 U.S. Government Accountability Office report, OPIC's Office of Accountability recently highlighted several areas where OPIC's monitoring, including site visits, should be strengthened. OFFICE OF ACCOUNTABILITY, ASSESSMENT OF OPIC'S ENVIRONMENTAL AND SOCIAL (E&S) MONITORING OF PROJECTS (Feb. 7, 2018), https://www.opic.gov/sites/default/files/files/OA_Assessment_OPIC_ES%20Monitoring-Final-02072018.pdf. See also U.S. GOVERNMENT ACCOUNTABILITY OFFICE, OVERSEAS PRIVATE INVESTMENT CORPORATION, ADDITIONAL ACTIONS COULD IMPROVE MONITORING PROCESSES (GAO-16-64, December 2015), <http://www.gao.gov/assets/680/674142.pdf>; USAID OFFICE OF INSPECTOR GENERAL, ASSESSMENT OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION'S DEVELOPMENT OUTCOME AND COMPLIANCE RISKS (Report No. 8-OPC-15-002-S, May 15, 2015), <https://oig.usaid.gov/sites/default/files/2018-06/8-opc-15-002-s.pdf>.

The DFC should make certain that shortcomings in monitoring are addressed and robust project monitoring occurs.

- New environmental, social, and development policies, as well as any changes to existing policies, must be subject to a public consultation process.

Create an Effective Accountability Framework

- The transition plans for the DFC must include plans to build upon the experience of OPIC's Office of Accountability. The new independent accountability mechanism should have a direct reporting line to the DFC's Board and must be fully equipped to address complaints, facilitate the continual improvement of policy and practice across DFC, and provide remedy when harm occurs.³ This includes the creation of a reserve fund to facilitate the provision of remedy to adversely affected communities.
- The selection process for the head of the mechanism should involve participation from external stakeholders, including civil society.
- The mechanism should have a dedicated budget and sufficient resources to operate effectively.
- Robust public consultations should be held to guide the development of the mechanism, including its Board resolution, structure, policies, and procedures.

³ The mechanism should align with international best practice and the criteria set forth in the UN Guiding Principles on Business and Human Rights on grievance mechanisms. See C. Daniel, K. Genovese, M. van Huijstee & S. Singh (Eds.), *Glass Half Full? The State of Accountability in Development Finance*, Jan. 2016, available at glass-half-full.org; UN Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework, Principle 31, available at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf.